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BRIEFING

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Proposal for a New Private Investment Law in Angola

On 28 February, in its 2nd Ordinary Session, the Council of Ministers of the Republic of Angola evaluated the Proposal for a new Private Investment Law (P-PIL), which shall revoke the current Private Investment Law (PIL), approved by Law no. 14/15, of 11 August.

This *Briefing* is not meant to be exhaustive, outlining only some of the features that appear most relevant to us.

The P-PIL shall apply to private investment projects regardless of their amounts, unlike the PIL, which required a minimum threshold for internal investments.

The PIL provides that the private investment framework applicable to oil exploration, mineral exploration and financial institutions sectors shall be governed by a specific legislation. Under the P-PIL, the private higher education and the State Science, Technology and Innovation sectors shall also be subject to specific regulation.

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Under the P-PIL, investors may choose to undertake investment operations which are internal, external or mixed, the latter being a new type of investment which includes both internal and external investment operations.

The obligation for Angolan partnerships (in share capital and management participation) in investment projects, defined in the PIL for the so-called "strategic" sectors, such as Tourism and Hotel Business; Transportation and Logistics; Telecommunications and Information Technologies; and Social Media, ceases to exist.

Under the PIL, the granting of incentives (whether fiscal or of other nature) depends upon the amounts of the investment (namely USD 1,000,000 in case of external investment) and on its location. Differently, the P-PIL provides that the granting of incentives depends on the business sectors in which the investment is framed and on the Development Areas provided – see below.

Such as in the PIL, the fiscal and customs benefits are not the rule, being limited in time, and they will be granted as a result of a negotiation, within the contractual regime (referred to further below).

The priority trade sectors mentioned in the P-PIL are: *(i)* Food and Agro-industry; *(ii)* Forest Resources; *(iii)* Textile, Clothing and Footwear; *(iv)* Hotel business, Tourism and Leisure; *(v)* Construction, Public Works, Telecommunications and Information Technologies' Infrastructures; *(vi)* Energy and Water; and *(vii)* Education, Training and Investigation; *(viii)* Health.

The Development Areas established in the P-PIL are:

- Zone A – Provinces of Luanda and Namibe, the main-municipalities of the provinces of Benguela and Huíla and the municipality of Lobito;
- Zone B – Provinces of Cabinda, Bié, Huambo, Bengo, Cuanza-Norte, Cuanza-Sul, Malanje, Namibe and Uíge and remaining municipalities in provinces of Benguela and Huíla;
- Zone C – Provinces of Lunda-Norte, Lunda-Sul, Moxico, Cunene, Zaire and Cuando-Cubango.

Although some references to the word "exemption" can still be found in the P-PIL, it appears, in short, that the investors may not expect actual tax exemptions, but only reductions in the tax rates.

The benefits to be granted vary according to the applicable procedural regime. In this matter, differently from the PIL, the P-PIL creates a new procedural regime for the investment: the prior declaration regime.

The Parties may freely choose between the two procedural regimes, however, the contractual regime only applies to investments within the aforementioned priority sectors.

The new framework is characterised through the simple presentation of an investment proposal to the competent entity for the purposes of granting benefits and registration of the investment. The P-PIL provides that the investment vehicle company must be incorporated in advance and the presentation of the private investment registry certificate (CRIP) is no longer necessary at the time of incorporation. The requirement to incorporate a company first under this investment procedure may need further clarification given the incorporation of an investment company is only one of the forms of investment, there are others such as, for example, acquiring shares and a business as a going concern, which do not appear to have this advance implementation before presenting the investment applications. The nature and details of the prior declaration and investment contract procedures will be subject to specific regulations to be approved in the future.

The contractual regime is characterised by involving a negotiation between the investment applicant and the competent authorities, on the specific terms of the investment and on the benefits sought. An extraordinary negotiation may take place in cases where the Government understands that projects of great interest to the economic development of the country are involved.

The prior declaration regime includes benefits regarding the following taxes: *(i)* Real Estate Transfer Tax; *(ii)* Industrial Tax; *(iii)* Capital Gains Tax; and *(iv)* Stamp Duty.

The contractual regime includes benefits regarding the following taxes: *(i)* Real Estate Transfer Tax; *(ii)* Real Estate Tax; *(iii)* Industrial Tax; and *(iv)* Capital Gains Tax.

The P-PIL establishes that under the contractual regime the tax benefits are higher than those foreseen for the prior declaration regime and that there may be a ranking of the tax rates and timeframes according to the activity sector and location of the investment. The maximum duration for the reduction of tax rates and the percentages in which these may be reduced are expressly indicated for each tax and for each regime.

Specific benefits for special purpose investment vehicles are also foreseen and they include, amongst others, the prompt granting of visas and residence permits; priority in the repatriation of funds and deferral of payment of tax due for a period no longer than one year. These vehicles may also have access to what the P-PIL qualifies as extraordinary benefits.

Under the P-PIL, many of the changes in an investment company's life such as increases in share capital, the broadening of the corporate purpose, the assignment of *quotas*/transfer of shares are now exempt from prior authorisation from the entity which approves the project, without prejudice to the requirements to communicate these changes, under terms to be regulated.

Finally, we note that in the same session, the Council of Ministers created the Agency for Private Investment and Exportations Promotion (AIPEX), a body within the Angolan State's Indirect Administration which shall be responsible for promoting investments and exports, in order to foster and improve the potential and opportunities of Angola, as well as the competitiveness of national companies in their internationalisation process. The goal therefore appears to be to return to the private investment procedure and the promotion of the incentive to exports being managed by a sole entity again rather than the various Ministries as is now the case.

Please note that the draft law still needs to be approved by the National Assembly and then published. It is possible therefore that further changes occur.

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